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December 27, 2007

VIA ELECTRONIC FILING

The Honorable Gregory M. Sleet
United States District Court
for the District of Delaware
844 N. King Street
Room 2124, Lockbox 19
Wilmington, Delaware 19801

Re: *ING Bank, fsb (d/b/a ING Direct), and ING Direct Bancorp v.
EverBank, and EverBank Financial Corp.*
Civil Action No. 07-154-GMS

Dear Chief Judge Sleet:

Enclosed please find a revised version of the parties' proposed Scheduling Order that incorporates the dates and other matters discussed at the scheduling conference held on December 17, 2007. Counsel for all parties have approved the enclosed proposed order.

Respectfully submitted,

/s/ Francis DiGiovanni

Francis DiGiovanni

FD:njw
Enclosure

cc: Clerk of the Court (by ECF)
Richard D. Kirk, Esq. (by ECF and e-mail)
R. David Hosp, Esq. (by e-mail)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ING Bank, fsb (d/b/a ING Direct), and
ING Direct Bancorp

Plaintiffs,

v.

EverBank, and
EverBank Financial Corp.

Defendants.

Civil Action No.: 07-154-GMS

SCHEDULING ORDER

This ____ day of December 2007, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on December 17, 2007, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures:** Unless otherwise agreed to by the parties, they shall make their Rule 26(a) initial disclosures on or before January 4, 2008.
2. **Joinder of other Parties and Amendment of Pleadings:** All motions to join other parties or amend the pleadings shall be filed on or before March 3, 2008.
3. **Discovery:** All fact discovery shall be initiated so that it will be completed on or before August 1, 2008. Expert Discovery shall be initiated so that it will be completed on or before October 3, 2008. Opening expert reports by the party bearing the burden of proof on each issue shall be served on or before August 15, 2008. Rebuttal expert reports by the opposing party shall be served on or before September 12, 2008.

4. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

5. **Confidential Information and Papers filed under Seal:** The parties will confer regarding a protective order and will submit such proposal to the Court by January 4, 2008. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers. **If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall submit any disagreements to the Court for resolution.**

6. **Settlement Conference:** The parties agree that the possibility of settlement may be enhanced by referral to United States Magistrate Judge Mary Pat Thyng.

7. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than August 8, 2008. Answering letter briefs shall be no longer than five (5) pages and filed with the Court

no later than August 15, 2008. Reply letter briefs shall be no longer than three (3) pages and filed with the Court no later than August 22, 2008. The Court shall hold a Status Conference to hear argument and to determine whether the filing of any motion for summary judgment will be permitted on September 5, 2008 at 10:00 a.m.

Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.

8. Case Dispositive Motions. All case dispositive motions and an opening brief and affidavits, if any, in support of the motion shall be served and filed no later than (a) September 18, 2008, or (b) two (2) weeks after Court's decision on the issues addressed during the summary judgment teleconference. Briefing will be presented pursuant to the court's Local Rules, unless the parties agree to an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order must be accompanied by an explanation or your request will be denied.

9. Applications by Motions. Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

10. Oral Argument. If the Court believes that oral argument is necessary, the Court will consider the request and schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

11. Motions in Limine. No side shall file more than five (5) motions *in limine*. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed

three (3) pages. Motions *in limine* are due no later than December 9, 2008. All *Daubert* issues shall be briefed on the same schedule as *in limine* motions.

12. Pretrial Conference: On January 12, 2009, beginning at 10:00 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. The Joint Pretrial Order shall be filed no later than December 16, 2008. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order.

13. Trial: This matter is scheduled for a 5 day jury trial beginning at 9:00 a.m. on February 9, 2009.

14. Scheduling: The parties shall contact Chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

HON. GREGORY M. SLEET
United States District Chief Judge